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Identical letters dated 25 February 2013 from the Secretary-General addressed to the President of the General Assembly and to the President of the Security Council

I have the honour to transmit herewith the text of the human rights due diligence policy on United Nations support to non-United Nations security forces (see annex). Member States were advised of my decision to institute this policy by means of a note verbale dated 25 October 2011.

The policy sets out measures that all United Nations entities must take in order to ensure that any support that they may provide to non-United Nations forces is consistent with the purposes and principles as set out in the Charter of the United Nations and with its responsibility to respect, promote and encourage respect for international humanitarian, human rights and refugee law.

I wish to underline that the policy is based on existing standards and obligations that States have accepted through their membership in the United Nations, through their recognition of standards set out in the Universal Declaration of Human Rights and through their acceptance of obligations under key international instruments.

Insofar as the General Assembly and the Security Council may decide to mandate United Nations entities to provide support to non-United Nations security forces, I trust that both the Assembly and the Council will take the policy into account in their deliberations.

I should be grateful if you would bring the present letter and its annex to the attention of the members of the General Assembly and of the Security Council.

(*Signed*) BAN Ki-moon

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Annex

[Original: English and French]

Human rights due diligence policy on United Nations support to non-United Nations security forces

I. Core principles

1. Support by United Nations entities to non-United Nations security forces must be consistent with the Organization's purposes and principles as set out in the Charter of the United Nations and with its obligations under international law to respect, promote and encourage respect for international humanitarian, human rights and refugee law. Such support should help recipients to attain a stage where compliance with these principles and bodies of law becomes the norm, ensured by the rule of law. Consistent with these obligations, United Nations support cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures. For the same reasons, if the United Nations receives reliable information that provides substantial grounds to believe that a recipient of United Nations support is committing grave violations of international humanitarian, human rights or refugee law, the United Nations entity providing such support must intercede with the relevant authorities with a view to bringing those violations to an end. If, despite such intercession, the situation persists, the United Nations must suspend support to the offending elements. Notwithstanding the present policy, existing obligations of human rights, humanitarian and refugee law continue to apply to all United Nations activities.

2. United Nations entities that are contemplating or involved in providing support to non-United Nations security forces must therefore pursue a policy of due diligence, comprising the following key elements:

(a) Before support is given, an assessment of the risks involved in providing or not providing such support, in particular the risk of the recipient entity committing grave violations of international humanitarian law, human rights law or refugee law;

(b) Transparency with receiving entities about the legal obligations binding the Organization and the core principles governing provision of support; and

(c) An effective implementation framework, including:

(i) Procedures for monitoring the recipient entity's compliance with international humanitarian, human rights and refugee law;

(ii) Procedures for determining when and how to intercede with a view to putting an end to grave violations of any of those bodies of law and for deciding, if need be, upon the suspension or withdrawal of support; and

(iii) General operational guidance, as required, by the respective United Nations entities to the country level on implementation of the policy.

3. Adherence to the human rights due diligence policy is important to maintain the legitimacy, credibility and public image of the United Nations and to ensure compliance with the Charter and with the Organization's obligations under international law.

4. Relevant policies and guidelines on specific areas of support, including the guidance notes developed in the inter-agency Security Sector Reform Task Force, must be consistent with the due diligence policy.

5. The present policy is not intended in any way to hinder the normal work of the Organization aimed at encouraging respect for international humanitarian, human rights or refugee law, including developing capacity as well as investigating and reporting on violations of those bodies of law and interceding with relevant authorities to protest those violations, secure remedial action and prevent their repetition. The policy is intended to complement those normal processes.

II. Human rights due diligence policy

A. Scope of the policy

6. The human rights due diligence policy applies to all United Nations entities providing support to non-United Nations security forces. It therefore applies not only to peacekeeping operations and special political missions, but also to all United Nations offices, agencies, funds and programmes that engage in such activities.

B. Definitions

7. For the purpose of this policy, "non-United Nations security forces" include:

(a) National military, paramilitary, police, intelligence services, border-control and similar security forces;

(b) National civilian, paramilitary or military authorities directly responsible for the management, administration or command or control of such forces;

(c) Peacekeeping forces of regional international organizations.

8. "Support" is understood to mean any of the following activities:

(a) Training, mentoring, advisory services, capacity- and institution-building and other forms of technical cooperation for the purpose of enhancing the operational capabilities of non-United Nations security forces;

(b) Ad hoc or programmatic support to civilian or military authorities directly responsible for the management, administration or command and control of non-United Nations security forces;

(c) Financial support, including payment of salaries, bursaries, allowances and expenses, whatever the source of the funds;

(d) Strategic or tactical logistical support to operations in the field conducted by non-United Nations security forces;

(e) Operational support to action in the field conducted by non-United Nations security forces, including fire support, strategic or tactical planning;

(f) Joint operations conducted by United Nations forces and non-United Nations security forces.

9. "Support" does **not** include:

(a) Training or sensitization regarding international humanitarian, human rights and refugee law;

(b) Standard-setting (e.g. advice on and review of legislation, codes and policies) and capacity support directly related to the implementation and promotion of compliance with human rights laws and standards and to foster democratic governance of security institutions;

(c) Engagement to promote compliance with humanitarian, human rights and refugee law or to negotiate humanitarian access and carry out relief operations;

(d) Mediation and mediation-related support;

(e) Medical evacuation (MEDEVAC) and casualty evacuation (CASEVAC).

10. "Support" may be direct or indirect — that is, through implementing partners.

11. When determining whether an activity constitutes support or not in accordance with paragraphs 8 and 9 above, United Nations entities should consider the need to promote consistency in the implementation of the policy across the United Nations system according to paragraphs 18 and 20 below.

12. "Grave violations" mean, for the purposes of the present policy:

(a) In the case of a unit:

(i) Commission of "war crimes" or of "crimes against humanity", as defined in the Rome Statute of the International Criminal Court, or "gross violations" of human rights, including summary executions and extrajudicial killings, acts of torture, enforced disappearances, enslavement, rape and sexual violence of a comparable serious nature, or acts of refoulement under refugee law that are committed on a significant scale or with a significant degree of frequency (that is, they are more than isolated or merely sporadic phenomena); or

(ii) A pattern of repeated violations of international humanitarian, human rights or refugee law committed by a significant number of members of the unit; or

(iii) The presence in a senior command position of the unit of one or more officers about whom there are substantial grounds to suspect:

- Direct responsibility for the commission of "war crimes", "gross violations" of human rights or acts of refoulement; or
- Command responsibility, as defined in the Rome Statute of the International Criminal Court, for the commission of such crimes, violations or acts by those under their command; or
- Failure to take effective measures to prevent, repress, investigate or prosecute other violations of international humanitarian, human rights or refugee law committed on a significant scale by those under their command;

(b) In the case of civilian or military authorities that are directly responsible for the management, administration or command of non-United Nations security forces:

(i) Commission of grave violations by one or more units under their command;

(ii) Combined with a failure to take effective measures to investigate and prosecute the violators.

13. "United Nations" includes any office, department, agency, programme, fund, operation or mission of the United Nations.

C. Risk assessment

14. Before engaging in support, the United Nations entity directly concerned must conduct an assessment of the potential risks and benefits involved in providing support. This assessment should include consideration of the following elements (where a United Nations entity has an existing mechanism in place, this may be used to conduct the assessment in accordance with paragraph 19 below):

(a) The record of the intended recipient(s) in terms of compliance or non-compliance with international humanitarian, human rights and refugee law, including any specific record of grave violations;

(b) The record of the recipient(s) in taking or failing to take effective steps to hold perpetrators of any such violations accountable;

(c) Whether any corrective measures have been taken or institutions, protocols or procedures put in place with a view to preventing the recurrence of such violations and, if so, their adequacy, including institutions to hold any future perpetrators accountable;

(d) An assessment of the degree to which providing or withholding support would affect the ability of the United Nations to influence the behaviour of the receiving entity in terms of its compliance with international humanitarian, human rights and refugee law;

(e) The feasibility of the United Nations putting in place effective mechanisms to monitor the use and impact of the support provided;

(f) An assessment based on the factors above and on the overall context of the support, of the risk that the receiving entity might nevertheless commit grave violations of international humanitarian, human rights or refugee law.

15. Information on the record of the intended recipient with regard to compliance with international humanitarian, human rights and refugee law should be obtained from the United Nations or other reliable sources.

16. Where, as a result of this risk assessment, the United Nations entity directly concerned concludes that there are substantial grounds for believing that there is a real risk of the intended recipient committing grave violations of international humanitarian, human rights or refugee law, notwithstanding any mitigatory measures that the United Nations might take, then the United Nations entity concerned must not engage in the provision of support to that intended recipient. The United Nations entity should make clear that support will not be possible unless

and until the intended recipient takes measures that are of such effect that there are no longer substantial grounds for believing that there would be a real risk of such grave violations occurring. Such measures might include, for example, the removal of an officer from a senior command position when there are substantial grounds for suspecting that officer of being responsible for grave violations of international humanitarian, human rights or refugee law.

17. Where, as a result of the risk assessment, the United Nations entity directly concerned concludes that substantial grounds do **not** exist for believing there to be a real risk of the intended recipient committing such violations, then the United Nations entity concerned may proceed to engage in the provision of support, subject to compliance with the following sections of this policy.

D. Transparency

18. Effective implementation of the policy requires the understanding and cooperation of all stakeholders, including donor and programme countries, troop- and police-contributing countries and host countries of United Nations peacekeeping and political missions. Each entity mandated to or anticipating support for non-United Nations security forces shall engage proactively with Member States and other relevant partners and stakeholders to explain the policy.

19. Before engaging in support to non-United Nations security forces, the responsible senior United Nations official[s] (e.g. Special Representative of the Secretary-General, Resident Coordinator, country representative) should inform the recipient authority/ies in writing of the United Nations core principles for support to non-United Nations security forces under this policy. In particular, recipients should be notified that United Nations support cannot be provided to units that fall under the command of individuals against whom there are substantiated allegations of grave violations of international humanitarian, human rights or refugee law. The recipient authority should also be advised of procedures or mechanisms to implement the policy, as outlined in section III below. It should be made clear to the recipient that, in order to sustain the support, the United Nations is obligated to continuously assess whether or not the recipient's actions are consistent with the Organization's obligations under the relevant bodies of law. While advocacy and communication may be undertaken by a specific United Nations entity, it should be coordinated to promote consistency across the United Nations in-country, and the most senior United Nations official in a given country (Special Representative of the Secretary-General and/or Resident Coordinator) should be kept informed of such steps.

III. Ensuring effective implementation

A. Elements of an implementation framework

20. Implementation of the human rights due diligence policy must take into account the specific mandates of the United Nations entity concerned, as well as the nature and extent of the support, and the political and operational context in which it is delivered.

21. Each United Nations entity providing support must develop an implementation framework in accordance with its management practices in order to ensure compliance with this policy. That framework should be clearly set out in a standing operating procedure or similar instrument. The framework should, where relevant, be reported to the entity's mandating body. Such a framework should include, as required:

(a) Resources required to effectively manage delivery of the support and to monitor and evaluate its impact;

(b) Incentives or other accompanying measures aimed at improving compliance by the recipient with international humanitarian, human rights and refugee law;

(c) Mechanisms for the effective monitoring of the recipient's behaviour to detect grave violations of international humanitarian, human rights and refugee law and the recipient institution's responses to any violations (such mechanisms should include procedures for regular reporting from the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations Children's Fund (UNICEF) and from the offices of the Special Representatives of the Secretary-General for Children and Armed Conflict, and the Special Representative of the Secretary-General on Sexual Violence in Conflict);

(d) Well-defined systems for the collation and effective review of information gathered through such monitoring and from other sources, including local protection of civilian networks;

(e) Well-defined procedures to guide decisions by responsible United Nations officials on whether or not violations committed by the recipient entity require intervention with the recipient entity or its command elements or, as a final resort, require the suspension or withdrawal of support under this policy;

(f) Clear procedures for communication with the relevant authorities where United Nations intervention or the suspension or withdrawal of support is required under this policy;

(g) Clear and effective procedures for evaluating and considering the possible risks if support is suspended or withdrawn, including risks to the safety and security of United Nations and associated personnel, and for identifying appropriate mitigatory measures, and ensuring that they are taken.

22. In the application of the policy and the use of measures set out in paragraphs 21 (a) to (g) above at the country level, each United Nations entity should take into account the need to promote consistency in the implementation of the policy across the United Nations system. The most senior United Nations official in country (Special Representative of the Secretary-General and/or Resident Coordinator) is responsible for initiating consultations on the implementation framework with all national and international stakeholders. In the case of integrated missions, consultations between the mission and the United Nations country team should be part of established procedure.

B. Prior advice to United Nations legislative bodies

23. Action by United Nations entities to support non-United Nations security forces requires particularly careful attention due to the special risks, potential liabilities and high visibility involved. It is therefore important that United Nations entities exercise due diligence, in particular by conducting a risk assessment, **before** a mandate or directive is adopted to provide support to non-United Nations security forces. The resulting evaluation should be included in reports or briefings to legislative bodies, as appropriate. In the peacekeeping context, such evaluations should help inform and shape proposals by the Secretary-General to legislative bodies regarding mandates.

C. Reporting and oversight

24. Relevant official United Nations reports (e.g. reports of the Secretary-General to the Security Council, country and thematic reports by United Nations offices, programmes, agencies and funds) should cover support provided to non-United Nations security forces, including the nature and scope of the support, measures employed to ensure compliance with the "due diligence" policy, related actions to promote respect for the core principles of United Nations support and an assessment of the impact of the support.

25. Where critical difficulties arise relating to such support, United Nations entities should report immediately to the relevant decision-making United Nations officials and legislative bodies, as appropriate, on developments related to the elements of the risk assessment that present the Organization or its personnel with the risk of being associated with grave violations of international humanitarian, human rights or refugee law. The United Nations entities involved should report on the circumstances, any measures taken to mitigate or remedy the situation and recommendations for follow-up action.

D. Mitigatory measures

26. If the United Nations receives reliable information that provides substantial grounds for believing that a recipient of United Nations support is committing grave violations of international humanitarian, human rights or refugee law, the United Nations entity providing support should bring these grounds to the attention of the relevant national authorities with a view to bringing those violations to an end.

27. If, despite intercession by the United Nations entity concerned, the United Nations receives reliable information that provides substantial grounds to suspect that the recipient entity is continuing to engage in grave violations of international humanitarian, human rights or refugee law, then the United Nations entity must suspend or withdraw support from the recipient.

E. Operational challenges

28. In the peacekeeping context, withholding or withdrawing support in the face of a failure by recipient security forces to comply with the core principles of the policy may significantly diminish the mission's ability to fulfil the overall mandate and objectives set out by the Security Council. Suspension or withdrawal of logistical, material or technical support may, however, become necessary where continued support would implicate the Organization in grave violations of international

humanitarian, human rights or refugee law. The Secretary-General should keep the Council informed of measures taken by a peacekeeping operation under this policy and, where it is thought that application of this policy would have a critical impact on the ability of the operation to discharge its mandate, should advise the Council in a timely manner and seek the Council's advice regarding the way forward. Similarly, should the withholding or withdrawal of support by a United Nations agency, fund or programme affect the ability of that entity to fulfil its mandate, the Executive Head of the said agency, fund or programme will advise the governing body of the agency, fund or programme in a timely manner, and seek its advice regarding the way forward.

F. Accountability

29. Following endorsement of the present policy framework by the Secretary-General, senior managers at Headquarters (Under-Secretaries-General, the Administrator of the United Nations Development Programme (UNDP), the Executive Directors of funds and programmes) are responsible for ensuring that support for non-United Nations security forces and institutions and implementation of the policy are kept under regular review in their areas of responsibility. They are also responsible for ensuring that significant developments in the implementation of this policy, including mitigatory actions taken under it, are brought to the timely attention of the Secretary-General and the relevant legislative bodies.

30. Where relevant, integrated mission task forces and integrated task forces should include in their agendas a standing item on review and evaluation of support provided to non-United Nations security forces.

31. A further submission to the Policy Committee should be prepared in one year's time, in the light of experience gained to determine, inter alia, if any further implementation measure(s) or mechanisms are required.